

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Federal Communications Commission  
Office of the Secretary

In the Matter of )  
 )  
Tariff Filing Requirements for ) CC Docket No. 92-13  
Interstate Common Carriers )

**COMMENTS OF LOCAL AREA TELECOMMUNICATIONS, INC.**

Local Area Telecommunications, Inc. ("LOCATE"), by its undersigned counsel, and pursuant to the Commission's Notice of Proposed Rulemaking (the "NPRM") released in this docket on January 28, 1992 (FCC 92-35), hereby submits its comments in response to the Commission's proposal to depart from its policy of forbearance from tariff regulation for non-dominant common carriers.

LOCATE respectfully submits that, for the reasons discussed below, the Commission's current policy is wholly consistent with the Communications Act and represents sound public policy. This rulemaking proceeding should therefore be dismissed.

However, if the Commission should determine that its current policy is unlawful, LOCATE urges the Commission to implement streamlined tariff procedures in order to avoid placing unnecessary burdens on non-dominant carriers. Maximum streamlining would embody the spirit of the Communications Act by reducing entry, exit, and pricing barriers for those carriers. Alleviating the administrative burden will help carriers lacking market power remain active in the highly competitive telecommunications market.

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## I. INTRODUCTION AND STATEMENT OF INTEREST

Founded in 1981, LOCATE has pioneered the provision of competitive access services, providing a broad range of interstate, and where authorized intrastate, competitive access services, primarily via microwave facilities, to interexchange carriers and corporations in various metropolitan areas nationwide. LOCATE's services include (among others) transmission of voice grade (64 kbps), DS1 (1.544 Mbps), and DS3 (44.736 Mbps) speeds.

LOCATE has offered its customers many service options unavailable from LECs: customized telecommunications applications to meet unique customer requirements, quicker response in installing new services and repairing downed circuits, and superior service reliability through redundancy (establishing secondary, or backup, facilities to complete service in case of an outage in the primary facilities) and diversity (routing redundant circuits over physically separate routes to further protect against service outage).

LOCATE is a "common carrier" within the meaning of section 3(h) of the Communications Act of 1934 (the "Act"), 47 U.S.C. § 153(h). As a non-dominant carrier, however, LOCATE is subject to the Commission's forbearance policy and is not required to file interstate tariffs.<sup>1/</sup> Accordingly, it has a direct and substantial

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<sup>1/</sup> The Commission has forbore from regulating the domestic interstate services of non-dominant carriers. See *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor ("Competitive Carrier Rulemaking")*, First Report and Order, 85 FCC 2d 1, Second Report and Order, 91 FCC 2d 59, 64 *et seq.* (1982), *recon. denied*, Third Report and Order, 93 FCC 2d 54 (1983), Fourth Report and Order, 95 FCC 2d 554, 557-79 (1983), *recon. denied*, Fifth Report and Order, FCC 84-394, 49 Fed. Reg. 34824, 34829-30 (September 4, 1984).

interest in the potential reimposition of tariff filing requirements on the interstate services of non-dominant carriers.

LOCATE respectfully submits that the Commission's tariff forbearance policy is entirely consistent with the Act. Rather than burden the record on this issue with duplicative arguments, however, LOCATE concurs with the comments being filed in this docket today by the Association for Local Telecommunications Services ("ALTS"), of which LOCATE is a member. LOCATE submits these separate comments to address in more detail the consequences that any retreat from the forbearance policy would have on non-dominant carriers in highly competitive markets.

This docket was opened as a result of AT&T's complaint against MCI challenging the Commission's legal authority to permit MCI to offer interstate services on terms that are not contained in tariffs under Section 203 of the Act.<sup>2/</sup> AT&T's argument was based solely upon the supposed unlawfulness of the forbearance policy, and did not call into question any of the underlying reasons for the Commission's adoption of that policy. Nor does the NPRM suggest that the Commission intends to re-examine those underlying policy considerations. LOCATE therefore submits that the scope of this rulemaking docket should be limited to the Commission's tariff forbearance policy, and not to any other aspect of the *Competitive Carrier* policy decisions.<sup>3/</sup>

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<sup>2/</sup> See *AT&T v. MCI*, E-89-297, FCC 92-36 (released Jan. 28, 1992).

<sup>3/</sup> Even if the Commission finds that its current policy of forbearance is unlawful, such a conclusion should not affect the Commission's ability to classify carriers as dominant and non-  
(continued...)

## **II. THE POLICY JUSTIFICATIONS FOR FORBEARANCE, AS ADOPTED IN THE COMPETITIVE CARRIER DECISIONS, REMAIN VALID TODAY**

Forbearance alleviates the burden attendant to compiling, maintaining, and distributing information necessary to comply with tariff requirements. Those burdens are substantial; LOCATE's experience with filing tariffs for intrastate services, in those jurisdictions where it is required to do so, is that a significant number of work-hours are required for even minor tariff modifications, due to the detailed requirements that apply to the form and contents of tariffs. Every minute detail, down to the typographical symbols used to mark changes, has to be reviewed both by attorneys and by management.

Of course, the Commission as well would incur new burdens if tariff requirements were extended to non-dominant carriers. Millions of dollars of taxpayers' money would have to be spent for personnel to receive, file, review, and update the hundreds (or possibly thousands) of additional tariff filings that would be required. All of this private and public expenditure would be essentially nonproductive, because tariff regulation will not further any underlying policy goal of the Act. To the contrary, it will interfere with the goals, for the reasons articulated a decade ago by the Commission in its *Competitive Carrier* decisions.

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<sup>3/</sup>(...continued)

dominant, to regulate those classes differently in light of market realities, and to exempt non-dominant carriers from various burdensome regulatory duties other than tariffing, such as the need to seek authority under Section 214 of the Act before constructing or extending transmission lines.

The *Competitive Carrier Rulemaking* was an outgrowth of the Commission's belief that "the regulatory process itself may have both direct and indirect anticompetitive results which could impair or even frustrate the realization of the public interest benefits sought by the Commission's pro-competitive policies."<sup>4/</sup> The Commission has noted that "competition is clearly curtailed when firms are required to give advance notice of innovative marketing plans and have those initiatives be subject to public comment and regulatory review."<sup>5/</sup> It is also likely that tariffing will impair competition by delaying or deterring carriers in their service and rate offerings.<sup>6/</sup> Additionally, for carriers such as LOCATE who negotiate their customers' charges in response to market conditions, the delays built into the tariffing process will prevent such negotiations from reflecting timely economic realities.

There has been no pattern of pricing abuses by non-dominant carriers. Rather, with rare exceptions, non-dominant carriers have behaved exactly as the Commission predicted they would in the *Competitive Carrier Rulemaking*. They have responded to market conditions by offering reasonable and competitive rates and service options, even in the absence of regulatory constraints.

A reversal of forbearance policy will impede overall activity by non-dominant carriers. Those carriers would be forced to divulge innovative service offerings and procedures to competitors, who would follow those steps to the detriment of the

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<sup>4/</sup> *Competitive Carrier Rulemaking*, First Report and Order, 85 FCC 2d 1, 2-3.

<sup>5/</sup> *Id.* at 5.

<sup>6/</sup> *Competitive Carrier Rulemaking*, Fourth Report and Order, 95 FCC 2d 554, 580.

innovator. Non-dominant carriers would be forced to bear the additional cost of following elaborate procedures, and as a consequence consumers would ultimately be forced to pay higher rates.

LOCATE supports the Commission's finding that its current policy "promotes the public interest in efficient telecommunications services by removing costly regulatory burdens while maintaining adequate assurance of just and reasonable rates and service availability."<sup>7/</sup>

### **III. IMPOSING TARIFF REQUIREMENTS ON NON-DOMINANT CARRIERS WILL HINDER PROGRESS IN THE TELECOMMUNICATIONS INDUSTRY**

The Commission's current policy of forbearance was adopted to allow non-dominant carriers to flourish in a competitive marketplace with minimum regulatory interference.<sup>8/</sup> The Commission has stated that, under the procedures adopted in the *Competitive Carrier* decisions, non-dominant carriers:

will be afforded the flexibility to experiment with price/service offerings without the burden and delay of attempting to compile and produce substantial economic supporting data well in advance of when they will be permitted to market the service. They will now also be authorized to enter new markets quickly where they perceive competitive opportunities exist, or leave others on relatively short notice if their projections are not realized.<sup>9/</sup>

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<sup>7/</sup> *Id.* at 582.

<sup>8/</sup> *Competitive Carrier Rulemaking*, First Report and Order, 85 FCC 2d 1, 30 (1980).

<sup>9/</sup> *Id.* at 30.

This policy has been a remarkable success. Today, hundreds of non-dominant carriers exist, offering customers a wide range of diverse and innovative services.

Personal Communications Services ("PCS") is just one example of new services that benefit from the competitive market currently accessible to non-dominant entrepreneurial corporations unencumbered by burdensome tariff requirements. LOCATE is currently pioneering, through its wholly-owned subsidiary, Personal Communications Network Services of New York, Inc., the application of PCS technologies and other experimental, state-of-the-art service applications.<sup>10/</sup> PCS is a next-generation of digital, wireless telecommunications services that epitomize the future of telephonic and data communications. PCN is designed to provide high-quality digital voice communications, high-quality data transmission, and high-quality image transmission to broaden the array of service choices available to the public. PCS has the potential to become an almost universal network for transmission between portable handsets and microcells.

Burdensome tariff requirements would likely impede commercial introduction of PCS, and of other innovative service offerings in important segments of the telecommunications industry. The cost and inconvenience attendant to increased tariff obligations may dissuade various carriers from offering innovative technologies. LOCATE also is concerned that local exchange carriers may seek to utilize the tariff

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<sup>10/</sup> LOCATE's subsidiary has performed substantial testing with PCS technology in the New York City metropolitan area and has applied for a pioneer's preference to construct and operate a personal communications network in the New York City metropolitan area.

process aggressively against non-dominant providers, thereby erecting barriers to, and thwarting the introduction of, competitive service offerings.

#### **IV. IF FORBEARANCE IS UNLAWFUL, THE COMMISSION SHOULD ADOPT MAXIMUM STREAMLINING OF TARIFF REGULATION FOR NON-DOMINANT CARRIERS**

If the current forbearance policy is eliminated, the Commission should seek to reduce dramatically the burdens imposed by its current tariff rules on non-dominant carriers. If the Commission does not have authority to permit interexchange carriers to offer interstate services on terms that are not contained in tariffs under Section 203 of the Act, it nonetheless should implement maximum streamlined regulation of the tariffs of non-dominant carriers. This would avoid unnecessarily burdening regulatory entities and stifling developing competition in important segments of the telecommunications industry.

LOCATE respectfully submits that, even if tariff forbearance were found to be unlawful, any reimposed tariff requirement would have to comply with the provisions of the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.* That act was promulgated in order to "minimize the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons..." 44 U.S.C. § 3501(1).<sup>11/</sup> The act requires the approval of the Director of the Office of Management and Budget for any new or modified information collection requirement

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<sup>11/</sup> "The term 'burden' means the time, effort, or financial resources expended by persons to provide information to a Federal agency . . . ." 44 U.S.C. § 3502(3).



on the public.<sup>12/</sup> In granting approval, the Director is required to determine "whether the collection of information by an agency is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility." 44 U.S.C. § 3508.

The Paperwork Reduction Act is an embodiment of Congress' desire to facilitate social and economic progress by reducing the paperwork burden placed upon private parties, and small businesses in particular, when dealing with the Federal government. Consistent with this policy, the Commission should seek to structure any reinstated tariff duties so that it imposes the *minimum* burden on non-dominant carriers that is consistent with the Communications Act.

Among other things, the Commission should consider permitting non-dominant carriers to change rates on one day's notice without filing cost support, a presumption of lawfulness for all non-dominant carriers' tariffs (as under current rules), substantially reduced tariff filing fees, and authority to file flexible and/or banded rates.

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<sup>12/</sup> 44 U.S.C. § 3507; *See also Detariffing the Installation and Maintenance of Inside Wiring*, CC Docket No. 79-105 (released Feb. 14, 1992).

## CONCLUSION

For the reasons discussed above, the Commission should maintain its existing policy of forbearance with respect to tariffs for the domestic interstate services of non-dominant carriers, and should dismiss this proceeding.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Andrew D. Lipman and", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March 1992, copies of Comments of Local Area Telecommunications, Inc. were served by hand on the following:

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